STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Geneseo Telephone Company, Cambridge Telephone Company and Henry County Telephone Company Petition for Universal Service Support	)))))	 Docket No. 11-0210
Illinois Independent Telephone Association Petition to update the Section 13-301(d) Illinois Universal Service Fund and to Implement Intrastate Switched Access Charge reform as described herein and for other relief	)))))))	 Docket No. 11-0211

REPLY TO BRIEFS ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

James V. Olivero
Kelly A. Armstrong
Matthew L. Harvey
Office of General Counsel
Illinois Commerce Commission

160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
(312) 793-2877

527 E. Capitol Avenue
Springfield, Illinois 62701
(217) 785-8439

February 7, 2013

Counsel for the Staff of the Illinois Commerce Commission

Table of Contents

The Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and pursuant to Section 200.830 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.830, respectfully submits its Reply to Briefs on Exceptions in the above-captioned matter.

I. Introductory Matters

The Staff notes that the Commission is called upon in this proceeding to balance two competing interests. First, the Commission must establish a fund of sufficient size to make certain that telephone service is available to IITA customers at reasonable rates. Second, the Commission must make certain that the fund is not of a greater than sufficient size, inasmuch as it is a subsidy, paid for by all Illinois landline subscribers, most of whom will never benefit from it. Finally, the Commission must recognize that the IUSF is not intended to benefit IITA companies, but rather their customers. The Staff has attempted to craft its position with these considerations in mind, and strongly believes that the Proposed Order perfectly embodies them, and should be adopted.

II. The Commission Should Not Add Access to Broadband Services to the List of Supported Services On This Record

The Geneseo Telephone Company, Cambridge Telephone Company and Home Telephone Company (collectively, GTC) raises essentially the same arguments in its Brief on Exceptions as in its Initial and Reply Briefs. Specifically, GTC take exception to the Proposed Order's rejection of GTC's Plan to: (a) include access to broadband as a supported telecommunications service; (b) establish an affordable rate for such services of $15.46 per line per month; and (c) award GTC the collective sum of $1,529,797.00, divided as follows: $1,100,319.00 for Geneseo, $222,438.00 for Cambridge, and $207,040.00 for Henry. GTC BOE at 9, 20, and 31, and generally. All these contentions were, quite correctly, rejected by the ALJ in the Proposed Order. The Staff has rebutted GTC's infirm arguments in its Reply Brief. *See* Staff RB at 2-8. Further, the Staff fully endorses the Proposed Order's trenchant analysis regarding this issue. *See* PO at 65-67. Accordingly, the Staff will not recapitulate its response to GTC in any great detail, and will stand on its arguments as set forth in its Reply Brief.

However, Staff feels compelled to comment on GTC's Sisyphean attempts to advance its discredited theory that the FCC declared Access to Broadband Services to be supported services in its *Transitional Order*, and that the Commission is therefore required by operation of law to include such services within the definition of supported services for purposes of Illinois universal service support. *See, generally*, GTC BOE at 7, 9, *et seq*. GTC argues that: "Access to Broadband Service was indeed made a part of the FCC's amended definition of what 'universal service means', making it part of the minimum supported telecommunications services required under the [Illinois] PUA." GTC BOE at 9. Indeed, GTC argues that the Commission is "bound" to add Access to Broadband Service to its list of supported telecommunications services. Geneseo BOE at 7. GTC considers this proposition to be "crystal clear." GTC BOE at 4.

In so arguing, GTC acknowledges, in a passing and cursory way, that the FCC <u>actually defined</u> supported services so as ***<u>not</u>*** to include broadband in any way shape or form. Id. at 4, 9; *see also* 47 C.F.R. §54.101 (FCC defines supported services as "voice telephony services" and requires carriers receiving federal universal service support to provide "voice grade access"). Since this alone is essentially fatal to GTC's theory, it argues that the Proposed Order errs by looking: "narrowly at only one provision of … FCC Rule … 54.101 … which states '[v]oice telephony service shall be supported by federal universal support mechanisms' to conclude that the FCC did not make access to broadband a component of universal service." Id. at 4. GTC considers this to be "myopic." Id.

In fact, if vision is to be the metaphor of choice here, the Proposed Order's findings are clear-sighted about the FCC's rules and Transitional Order, while GTC's might well qualify as legally blind. The FCC's Transitional Order is, as GTC would say, "crystal clear"; in it, the FCC states that: "we do not, at this time, add broadband to the list of supported services[.]" *Report and Order and Further Notice of Proposed Rulemaking,* ¶65, In the Matter of Connect America Fund / A National Broadband Plan for Our Future / Establishing Just and Reasonable Rates for Local Exchange Carriers / High-Cost Universal Service Support / Developing an Unified Intercarrier Compensation Regime / Federal-State Joint Board on Universal Service Lifeline and Link-Up / Universal Service Reform – Mobility Fund, FCC No. 11-161, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208 (Adopted: October 27, 2011; Released: November 18, 2011) (USF Transitional Order) (emphasis added). Here, examining both the FCC's "words" as well as its "deeds", as GTC repeatedly urges the Commission to do, see, e.g., GTC BOE at 10-11, both the FCC's words ("we do not … add broadband to the list of supported services") and its deeds (adopting a rule that excludes broadband from supported services), lead inevitably to the conclusion that the FCC did precisely the opposite of what GTC suggests it did. As such, GTC's arguments should be rejected by the Commission.

Section 13-301(2)(a) requires that the IUSF-supported services: "shall, at a minimum, include those services … defined [as such] by the [FCC] … as from time to time amended." 220 ILCS 5/13-301(2)(a). Not only does the explicit definition of supported services adopted by the FCC include voice telephony service only, but the FCC has clearly and explicitly indicated that broadband is not on the list of supported services, and that the FCC specifically so intended. Thus, it is clear that the Commission is not required to declare broadband a supported service by operation of Section 13-301(2)(a).

GTC attempts to assert that, because the FCC repeatedly referred to "broadband" in the Transitional Order, this somehow argues in favor of the notion that the FCC intended to support broadband, notwithstanding the fact that it said it did not. GTC BOE at 5. This is as unconvincing as GTC's other arguments. The FCC explained that its modified definition of supported services: "simply shifts to a technologically neutral approach, allowing companies to provision voice service over any platform, including the PSTN and IP networks." FCC Transitional Order, ¶78. Despite its expansion of technological options, the FCC specified that: "[o]ur obligation to consumers is to ensure that they receive supported services." FCC Transitional Order, ¶ 222.

Thus, despite any broadband considerations, and while it has signaled that the future might bring changes, the core objective of the FCC's universal service program remains making and keeping voice telephony service ubiquitous, and voice services are the core ones supported. It appears that the FCC seeks to encourage and even support certain investments in broadband <u>that enable voice telephony</u>. However, the FCC has declined to define broadband as a stand-alone supported service under Section 54.101 of its rules, and made clear in the Transitional Order that this was intentional.

In the event the Commission does not agree with GTC that the Commission is required by law to make broadband a supported service, Geneseo argues that the Commission <u>should</u> do so as a matter of policy. GTC BOE at 9. The Staff recommends that the Commission decline to do so on this record.

To be clear, Staff strongly supports making broadband services available to all Illinoisans. Staff RB at 1-2. As Staff noted, the policy of the State is to foster the deployment and adoption of broadband services. Staff RB at 1-2, *citing* 20 ILCS 661/1, et seq. (High Speed Internet Services and Information Technology Act); 220 ILCS 5/13-804. Further, as Staff noted in its Brief on Exceptions, the Commission has the authority to determine that broadband services be supported. Section 13-301(2)(a) of the Public Utilities Act authorizes the Commission to: "[d]efine the group of services to be declared 'supported telecommunications services' that constitute 'universal service'." 220 ILCS 5/13-301(2)(a). Whether the Commission should determine that broadband services be supported by the IUSF at this time is another question altogether. The Commission is authorized to add to the list of supported services "if appropriate[.]"

Here, adopting GTC's proposal is neither appropriate, supported by the record, nor even lawful. GTC's proposal is utterly defective, in that it fails to define access to broadband services in terms of what supported service will be provided to customers, seeks to establish an affordable rate that is both artificially low and quite unlawful, and seeks to recover "actual, invoiced costs" rather than the economic costs called for in Section 13-301(1)(d). *See* 220 ILCS 5/13-301(1)(d) (in determining support amounts, Commission shall determine economic costs of providing service); see also *Second Interim Order* at 14, Illinois Independent Telephone Association: Petition for initiation of an investigation of the necessity of and the establishment of a Universal Service Support Fund in accordance with Section 13-301(d) of the Public Utilities Act / Illinois Commerce Commission On Its Own Motion: Investigation into the necessity of and, if appropriate, the establishment of a Universal Support Fund pursuant to Section 13-301(d) of the Public Utilities Act, ICC Docket Nos. 00-0233 / 00-0335 (Consolidated)(September 18, 2002) (Second Interim Order) (economic costs are forward-looking costs).

GTC argues that the Proposed Order incorrectly concludes that its definition of Access to Broadband Service is at odds with federal policy because it is not based on what service is provided to end-users, but rather by what facilities must be built to provide them. GTC BOE at 16. GTC refers to language in the FCC's USF support rules that refers to "plant that can, either as built or with the addition of plant elements, when available, provide access to advanced telecommunications and information services." GTC BOE at 17, *citing* 47 C.F.R. §54.7. In invoking Rule 54.7, however, GTC ignores Subsection (a) of Section 54.7, which specifies that: "[a] carrier that receives federal universal service support shall use that support <u>only for the provision, maintenance, and upgrading of facilities and services for which the support is intended</u>." 47 C.F.R. § 54.7(a) (emphasis added). Section 54.101 provides, quite clearly and unambiguously, that "voice telephony service" is the sole service for which support is intended. 47 C.F.R. § 54.101. GTC's definition fails to incorporate any such limitation. Without it, GTC's proposal allows for support of facilities and services that bear no relation to voice telephony service or any specific supported service whatsoever. That is, rather than provide some clarity with respect to what types of facilities can be supported within the context of supporting voice telephony services, GTC's definition could open support to such facilities within any context. For example, GTC's proposed definition might allow support of plant that can, either as built or with the addition of plant elements, when available, provide access to advanced telecommunications and information services that is used primarily to provide electric service. As this example illustrates, it is tantamount to ensuring proper use of funds to specify the services for which they are intended. GTC's proposal does no such thing. As a result the Proposed Order was correct to reject it.

GTC raises several equally unavailing arguments regarding its proposed affordable rate for access to broadband services, which it argues should be set at $15.46 per line per month, arguing that it is based on substantial record evidence. See GTC BOE at 20-21. As the Staff demonstrated in its Reply Brief, Staff RB at 7-

8, and as the Proposed Order correctly found (while noting that no affordable rate need be established), GTC's proposal is markedly deficient, inasmuch as:

> [GTC] proposes an affordable rate for access to broadband services that, based on its own evidence, is less that 38% of what the average U.S. or Illinois citizen pays for similar services. … [T]he Commission observes that any affordable rate for broadband services should follow well-established universal service principles of comparability across regions. As indicated by Staff, IITA and AT&T Illinois, [GTC's] rate does not do so.

Proposed Order at 67

Confronted with this insurmountable defect in its proposal, GTC argues in the alternative that, in the event the Commission determines that broadband should be supported, but does not accept every aspect of GTC plan: "an appropriate alternative would be for the Commission to enter an interim order on the other matters raised in this proceeding and remand it for further proceedings – including possibly workshops – aimed at determining an appropriate affordable rate for Access to Broadband Services." GTC BOE at 22. As a further alternative, GTC recommends that the $41.00 nationwide average it used to develop its $15.46 affordable rate should be the affordable rate. Id. at 23. The Commission should not accept either recommendation.

First, GTC's workshop proposal puts the cart well before the horse. Before the Commission sets an affordable rate for a service, it must know with some precision what service it is setting an affordable rate for. Here again, GTC presents no useful evidence whatever. As AT&T Illinois points out, GTC has not come close to specifying what "access to broadband service" means in terms of what service will be provided to an actual end-user customer. AT&T IB at 11. Universal service support is not a form of corporate welfare; *end-user customers*, not *subsidized* *companies*, are intended to be the beneficiaries of high cost support. *See* 220 ILCS 5/13-102(a) ("universally available and widely affordable telecommunications services are essential to the health, welfare and prosperity of all <u>Illinois citizens</u>") (emphasis added); 47 U.S.C. §254(b)(3)("<u>Consumers</u> in all regions of the Nation, including … those in … high cost areas, should have access to <u>telecommunications and information services</u> … that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas")(emphasis added). The Proposed Order correctly notes GTC's failure in this regard, observing that: "GCHC's definition***<u>s</u>*** [of access to broadband service] ***<u>are</u>*** not based on what service is provided to end-users, as is required by statute, but what facilities GCHC builds to provide them." Proposed Order at 66 (emphasis added). The Commission should adopt this view.

Second, GTC's workshop proposal would delay the proceeding. Thus, should the Commission determine that broadband should be a supported service going forward, Staff recommends that, instead of prolonging the instant proceeding and delaying the updates that Staff recommends, the Commission should adopt the Interim IUSF recommended by Staff and direct that any longer-term IUSF replacing the Interim IUSF shall contain support for broadband.

GTC's proposal that the Commission adopt a $41.00 affordable rate for access to broadband services is, among other things, unlawful, at least with respect to GTC. Section 13-301(2)(c) provides that: "[t]he affordable [rate] for the supported telecommunications service shall be no less that the rates in effect at the time the

Commission establishes a fund pursuant to this item." 220 ILCS 5/13-301(2)(c). The record reflects that GTC's rates for internet access are between $49.95 (for a download speed of 965kbps) to $128.95 (or download speeds up to 24Mbps). AT&T Illinois Ex. 1.1 at 15. Accordingly, GTC's proposal cannot be adopted.

In fact, GTS's entire proposed funding methodology is unlawful. In simple terms, Section 13-301(d) provides that IUSF support is the difference between the economic cost a carrier incurs to provide service, less the Commission-established affordable rate, less federal USF provided for the same service. 220 ILCS 5/13-301(d). In contrast, GTC's methodology to generate an IUSF support amount (although GTC describes this as a "cap") is to multiply the number of access lines it serves by twelve, and multiplying the product of that by its proposed affordable rate of $15.56. GTC Ex. 1.0 at 7-8. This, again, is completely at odds with the statute, especially since GTC has yet to reveal anything about what its economic costs are, except that they will be "actual, invoiced" costs – essentially "TBD".

In summary, GTC has presented a proposal that is almost completely defective. The Commission should reject it.

III. The Proposed Order Correctly Determines that S-Corporations Should Not be Permitted to Impute Federal Income Taxes that they Do Not Pay

The Proposed Order correctly decides that IITA member companies which are organized as S-corporations should not be allowed to impute federal income taxes as an expense item, because S-Corporations do not pay federal income taxes. *See* Proposed Order at 42-44. The Commission should adopt this recommendation.

Several IITA members elected a federal tax filing status – election of S-Corporation status – that resulted in the companies themselves not paying corporate income taxes, while nonetheless imputing federal income taxes as a corporate expense item as well as providing for it in their Gross Revenue Conversion Factor (GCRF). As the Proposed Order recognizes, this results in increased IUSF support. PO at 43. The IITA argues that, notwithstanding the fact that its S-Corporation members do not actually pay corporate income taxes, they should be permitted to impute such taxes, include them in their GCRF, and thereby recover them through IUSF funding. *See* Cass County, *et al.*, IB at 4-11, RB at 1-6, IITA BOE at 1-8. The Proposed Order rightly rejected this proposition. PO at 42-43.

The IITA's argument, as expressed in its Brief on Exceptions, is essentially the same as the argument expressed by Cass County, et al.: that since the Federal Energy Regulatory Commission (FERC) and the National Exchange Carrier Association (NECA) permit entities under their jurisdiction (insofar as NECA, a non-governmental organization, can be said to have "jurisdiction") to impute income taxes that they do not actually pay. IITA BOE at 3-6. It argues that taxes, even where they are unquestionably not paid by the corporation, are an unavoidable cost of company operations. Id. at 2, et seq. Finally, it argues that the Illinois Supreme Court's decision in Harrisonville Telephone Co. v. Commerce Comm'n, 212 Ill.2d 237, 817 N.E.2d 479 (2004) requires the treatment the S-Corporations seek. Id. at 6-7. It states that the Proposed Order would, if adopted, result in a "shortfall" of over $730,000 to the S-Corporations, apparently on the theory that not receiving a subsidy for an expense not incurred results in a loss. Id. at 7.

All of these arguments should be rejected. First, the Illinois Appellate Court has spoken directly to this issue, and determined that the Commission was correct in not permitting S-Corporations to impute income taxes to the corporation, when they are not paid by the corporation. Monarch Gas Co. v. Commerce Comm'n, 51 Ill. App.3d 892, 895-96; 366 N.E.2d 945, 948 (5th Dist. 1977). That is the state of the law in Illinois, and is controlling, regardless of what FERC might do. The Proposed Order properly recognized this. PO at 43.

Second, IITA's reliance on Harrisonville is misplaced bordering on disingenuous. The Harrisonville decision does not, as IITA suggests, state that the Commission has "an affirmative obligation to fund supported services on a basis consistent with the directives of the FCC." IITA BOE at 6. What the Harrisonville court actually found was that: "[Section 13-301(d)] provides that the [Commission] should track the FCC definition of supported services, and the FCC has stated that voice grade access is a supported service. Further, the FCC has decided that all lines with voice grade access should receive federal USF support." Harrisonville, 212 Ill.2d at 251, 817 N.E.2d at 488. In other words, Harrisonville stands for the proposition that the statute requires the Commission to set up an IUSF that supports the entire list of supported services, as defined by the FCC. Nowhere does the Harrisonville decision suggest that the Commission is obliged to adopt NECA accounting adjustments. As this Commission has noted, in another case where a high-cost carrier sought increased IUSF funding based on an entirely elective transaction: "the actions of NECA are not binding upon the Commission[.]" Second Interim Order at 54. The Commission's decision to not recognize the transaction was sustained on appeal.[1] Harrisonville Telephone Co. v. Commerce Comm'n, 343 Ill.App.3d 517, 535; 797 N.E.2d 183, 197-98 (5th Dist. 2003).

As noted, a small subset of IITA companies, including Leaf River Telephone Company ("Leaf River"), elected S-Corporation status resulting in the companies themselves not paying corporate income taxes, while nonetheless imputing federal income taxes as a corporate expense item as well as providing for it in their GCRF. Leaf River, however, has rescinded its election as an S-Corporation, and has sought tax treatment as a C-corporation. Leaf River BOE at 1, et seq; PO at 43. Leaf River made this voluntary tax status election prospectively, for 2013 and beyond. This change in Leaf River's tax filing status was not known or reasonably certain to occur in 2010 or within 12 months of Leaf River's filing in March 2011, nor was it known or measurable during the course of the case as all other adjustments in this proceeding were. Further, its tax rate as a C-Corporation at this time is a projected amount.

Leaf River states that Staff proposed an adjustment to the tax rate to reflect a known and measurable change. Leaf River BOE at 2. Leaf River therefore suggests that its newly-adopted tax status change should be recognized for IUSF purposes if Staff's tax rate adjustment is adopted. Id.

This argument is misplaced and should be rejected. The adjustment made by Staff to which Leaf River refers is related to a known and measurable change in the state income tax rate, and not the voluntary election made by the Company for

[1] To do strict justice to IITA, in its Second Interim Order, the Commission acted in a manner consistent with an action NECA took, although the Commission made it clear that: "its determination … [was] based solely upon [the Commission's] authority to establish and size a USF under state statute." Second Interim Order at 54.

federal income tax Subchapter S tax status, and subsequent rescission of that status.

By way of background, the IITA parties stipulated that IITA members would base their Form 1.01s on 2009 financial results, with adjustments for known and measurable changes occurring in 2010. IITA Ex. 1.02, ¶¶7, 10 (First Amended Stipulation so provides). The concept of known and measureable changes cannot be stretched so far as to include any historical or prospective changes that one or a few companies propose at any time up until the final order is issued. The Commission should not allow this prospective change for a small subset of companies requesting Illinois Universal Service Fund ("IUSF") funding months after the record has been marked as Heard and Taken. It unfairly disadvantages the remaining companies that made adjustments and accepted Staff adjustments based on the agreed-to guidelines for known and measurable changes to Schedule 1.01 data.

What constitutes a "known and measurable change" is defined by Commission rules. A "known and measurable change" in operating results is one that occurred during the subject test year or is reasonably certain to occur in the 12 months subsequent to the subject test year. 83 Ill. Adm. Code 287.40. More specifically, Section 287.40 states in relevant part that:

> [Pro forma] adjustments shall reflect changes affecting the ratepayers in plant investment, operating revenues, expenses, and cost of capital where such changes occurred during the selected historical test year <u>or are reasonably certain to occur subsequent to the historical test year within 12 months after the filing date of the tariffs and where the amounts of the changes are determinable</u>.
>
> <u>Id</u>. (emphasis added)

Accordingly, a known and measurable change can only be the basis for an adjustment if it occurs within 12 months after the utility's filing date. The IITA member companies acknowledge this; as noted above, the First Amended Stipulation provides that 2009 financial data will be used, adjusted for 2010 known and measurable changes, Stipulation, ¶7, as does the IITA Petition itself. Petition, ¶15. The IITA filed its Petition on March 4, 2011. Staff used the Section 287.40 standard to evaluate the propriety of post-2009 adjustments. Each company, including the small group of S-Corporations, had the same opportunity to propose known and measurable changes that were reasonably certain to occur within 12 months of the selected, agreed upon 2009 test year. *See, e.g.,* Staff Ex. 2.0 at 4-5 (discussion of pro forma adjustments relating to one specific carrier).

Further, the change to the state income tax rate took place <u>within</u> the 12 months subsequent to the filing and was applied to each of the companies requesting funding. Staff Ex. 2.0R, pp. 3-4, l. 67-73. Staff's change was not a prospective change. Further, Leaf River raised its proposed "known and measurable adjustment" <u>after</u> all testimony filings, hearings, cross examination were completed and <u>after</u> the record had been marked heard and taken. See Tr. at 157 (record marked "Heard and Taken" on July 31, 2012); *see also* Leaf River Motion to Reopen (adjustment proposed by motion dated December 18, 2012).

In contrast, Leaf River's belated election to voluntarily change its tax status does not comport with any known and measurable standards or guidelines. Leaf River's <u>voluntary</u> change in tax status simply was not, <u>nor could it have been</u>, known, measurable or reasonably certain to occur within the 2009 "test" year adjusted for 2010 or within 12 months of the filing, as 83 Ill. Adm. Code 287.40 specifies that a "known and measurable" change must be.

Leaf River's attempt to equate what it believes to be a "likely situation," Leaf River BOE at 1, with a "known and measurable" event is misguided. A "likely situation" is not an event that is known and reasonably certain to occur within the next 12 months as agreed-to, or within 12 months of filing.

Leaf River argues that granting it IUSF support based on its 2009 financial data while also recognizing its 2013 tax status: "presents no real disharmony[.]" Leaf River BOE at 1. Leaf River further argues that: "Schedule 1.01 is a part of the proxy costs used by the Commission and those costs are useful if they reflect the likely situation of each company." Id. at 2. However, this argument does not comport with the Schedule 1.01 methodology – agreed to by Leaf River – which provides for out-of-period adjustments through 2010 (on the last page of Schedule 1.01) that are known and measurable.

Leaf River's claim that its late-filed and prospective proposal does not disadvantage the other companies is simply not accurate. Leaf River's proposal represents a special change for just 1 of the 32 companies requesting funding. BOE at 1. Leaf River's claim is not supported by evidence in the record allowing any similar adjustments since none of the other companies (other than the Subchapter S corporations) have proposed or been allowed adjustments that are so far outside of the stipulated 2009 year as is Leaf River's 2013 change. Without a thorough examination of all of the known and measurable changes that would be reasonably certain to occur in 2013, including the opportunity for discovery and cross-examination on the potential changes for each of the other companies, there is no possible way for Leaf River to substantiate its claim.

For the above reasons and those expressly stated in the PO, the Commission should not adopt Leaf River's late-offered prospective change.

IV. The Commission Should Decline to Grant Oral Argument

GTC seeks oral argument in this proceeding. GTC BOE at 35-36. It reiterates, in part, its unavailing argument that by specifically declining to add access to broadband service, however defined, to the list of supported services, the FCC actually added it to that list. Id. It is difficult to see how permitting GTC to attempt to explain this incongruous position will enlighten the Commission in any way, or constitute a useful expenditure of the Commission's valuable time. The Proposed Order has already identified the numerous and fatal defects in GTC's position. Further, the Staff notes that the Order in this case will establish an interim fund intended to go out of existence in two years, based on the understanding that the FCC will complete its USF reform initiative by that time. Proposed Order at 67. Accordingly, GTC proposal is at best unripe.

V. Conclusion

The Commission should adopt the Proposed Order dated January 17, 2013 in its entirety. Specifically, the Commission should adopt the Proposed Order's recommended findings and conclusions:

(a) declining to designate "access to broadband services", however GTC chooses to define it, as a supported service.

(b) rejecting the IITA's assertion that companies organized as S Corporations should be granted an allowance for an expense item for income taxes that they concede they do not pay, especially where, as here, it will result in an increase to each company's IUSF subsidy – in this case, a wholly unjustified and unearned one, since no expense is incurred. IUSF funding should not include income tax expense that the Companies do not incur.

(c) declining Leaf River's request to recognize its untimely-adopted C-Corporation status.

Further, the Commission should decline to entertain oral argument in this proceeding.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

____

James V. Olivero
Kelly A. Armstrong
Matthew L. Harvey
Illinois Commerce Commission
Office of General Counsel

160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
312 / 793-2877

527 E. Capitol Avenue
Springfield, Illinois 62701

February 7, 2013

Counsel for the Staff of the
Illinois Commerce Commission